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Docket No.: NY-LUD 5253-US5-DIV
(PATENT)

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Dated:

8/25/10

Signature:

(Eileen Sheffield)

Eileen Sheffield

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Thierry Boon-Falleur et al.

Application No.: 08/819,669

Confirmation No.: 1995

Filed: March 17, 1997

Art Unit: 1644

For: TUMOR REJECTION, ANTIGEN
PRECURSORS, TUMOR REJECTION
ANTIGEN S AND USES THEREOF

Examiner: P. Gambel

PETITION FOR REVIEW OF PATENT TERM EXTENSION
(37 CFR §1.181, MPEP 2720)

MS: Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to the above-referenced sections of 37 CFR and the MPEP, Applicants hereby petition for review of the determination that the patent term of this application should be extended by 407 days. Applicants believe the application is entitled to an extension of 5 years.

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FACTS

The subject application was filed on March 17, 1997, and hence is subject to the dictates of former 35 USC §154(b), as per MPEP 2720. According to former 35 USC §154(b) a patent application filed between June 8, 1995, and May 28, 2000, may be extended if the issuance of a patent is delayed by processing under 35 USC §135(a) or by appellate review which results in reversal of the Examiner's adverse determination of patentability. The maximum extension permitted is 5 years.

According to former 35 USC §154(b), there are two bases for reducing the extension, i.e., any time attributable to appellate review before the expiration of 3 years from the filing date of application for patent and for any length of time during which the applicants did not act with due diligence.

Prosecution of the subject application was suspended, twice, in view of potential interferences.

The first suspension began on August 20, 2001, with the issuance of a Letter of Suspension, and ended with the issuance of a non-final rejection, on September 30, 2002. This period was 407 days, and applicants have been granted this extension.

A second letter of suspension, however, issued on June 17, 2003 and the suspension ended on March 2, 2004, with a further, non-final rejection. This suspension lasted 259 days. Applicants believe they are entitled to an extension for this period.

On March 31, 2004, applicants filed a Notice of Appeal. This was filed more than 3 years after the filing date of the application.

The Board of Patent Appeals and Interferences reversed the Examiner on June 26, 2006. The length of time involved is 817 days.

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Applicants took an extension during this period, and filed their Reply brief on May 4, 2005, rather than April 11, 2005. Hence, 23 days should be subtracted, for a total of 791 days.

The application was appealed, a second time, by way of a Notice filed on August 6, 2007. The Board of Patent Appeals and Interferences again reversed the Examiner, on January 16, 2009. The total length of time involved was 528 days.

During this time period, since the Notice of Appeal was filed on August 6, 2007, applicant's brief was due on October 6, 2007; however, defective briefs were filed, and extensions were taken, the result of these being a late brief, i.e., which was accepted on February 12, 2008. Hence, it is believed that 135 days must be subtracted from the period of this second appeal, so the total extension believed appropriate is 393 days.

Thus, the four period of extension believed due to applicants are:

407 days	(first suspension)
259 days	(second suspension)
791 days	(first appeal)
383 days	(second appeal)

These totals include subtractions for each of diligence, and total 1850 days, which is just over 5 years, the maximum extension allowable.

Hence, applicants believe they are entitled to an extension of patent term of 5 years, and ask that this petition be granted with a Certificate of Correction so stating.

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Please charge any fees due herewith to Deposit Account No. 50-0624.

Dated: 8/25/10

Respectfully submitted,

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